



Client Contract Negotiation

Many of the contracts that design firms are expected to execute with their clients contain detailed and sometimes confusing insurance requirements. In addition, these requirements include specifications regarding types and limits of coverage as well as special endorsements that can be excessive, not available, not affordable and thus onerous for the design firm to obtain. It is important that design professionals be able to identify impossible or ambiguous insurance requirements and be prepared to negotiate these points in client contracts. One common pitfall of the client-written contract is that it often will ask design firms to provide the same types of coverages they routinely get from their contractors. Not only is this unreasonable and necessary, but it imposes unrealistic standards on the design firm and creates greater risk for uninsurable claims..

In addition to your internal review of contract insurance requirements, it is wise to enlist an experienced insurance broker who specializes in the design profession and can help you to educate clients regarding appropriate insurance coverages that are consistent with the general standards for the design industry, as well as negotiating reasonable coverages and rates with insurance companies on your behalf. When looking at insurance requirements, it also is critical that your firm maintain a policy for establishing and confirming the insurance of subconsultants. Your firm's

subconsultants should either meet your specific insurance requirements or match the requirements of the prime agreement. This will help protect your firm against the inherent vicarious liability and potential claims that are generated by the subconsultants work as well as satisfy "flow down" requirements that are commonly included in contract terms and conditions.

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Negotiating Contractual Insurance Requirements

You can start off on the best foot in contract negotiations involving insurance requirements by taking the initiative with new clients or projects and offer an insurance agreement in simple, straightforward language that conveys your intent to maintain appropriate insurance with reasonable limits of coverage and specifies your current insurance positions.

It is typical for there to be back and forth conversation between you and your client concerning the insurance requirements. This is an opportunity for you to educate them about your industry standards as well as your own firm's loss

prevention practices. In the end, particularly if your client is unwavering in their stance, many items may come down to a business decision concerning how important the project is versus how much risk and possibly extra expense you are willing to take on.

While many types of insurance may be addressed in the client contract, this article will focus on the coverage that seems to generate the most need for negotiation: professional liability.

Elements of Professional Liability

Clients may insist that you guarantee to maintain a certain level of professional liability coverage for an extended time. Because of the volatility of the insurance market, it is best not to provide such guarantees. Instead, negotiate for language that states you will maintain coverage for the period given that such coverage is reasonably available and commercially affordable.


If a design firm goes uninsured for a period of time and then obtains a new professional liability policy, the original retroactive date will most likely be lost and coverage will be for services performed on or after the new policy's inception date.

The policy limits themselves often become the most pressing negotiation point. While the industry standard for A/E firms is generally \$1,000,000 or \$2,000,000 limits, many clients will attempt to require limits of \$5,000,000 or beyond. Not only can excessively high limits be difficult to obtain (particularly for smaller firms), they also can be cost prohibitive. The first line of action in this case is to present the insurance you have in place and make your case for that amount to be accepted as sufficient coverage. In this negotiating process you can discuss standard insurance practices in your industry, the level of your involvement in the project, your experience level and claims history as well your loss prevention and risk manage-

ment practices. In the meantime, you may seek to obtain pricing from your insurance broker for the higher limits and be prepared to work with your client regarding the additional cost if the insurance is available for purchase.



Professional Liability vs General Liability

Many clients will ask to be named as additional insured on your insurance. Although it is usual and customary to include a client as an additional insured on a general liability insurance policy, it is not possible to do so on a professional liability insurance policy. This is not available on a professional liability policy for a number of reasons, including the fact that the client is not a licensed design professional and adding the client as additional insured to the professional liability policy is not a benefit to the client due to **exclusion-ary language**. 

Protecting Yourself

Since clients require verification of insurance coverage maintained by design firms, it's only fair that architects and engineers receive similar verification of the insurance their clients are maintaining, as well as the coverage secured by the contractor. Part of your negotiation should be to ask for insurance certificates and in some cases reciprocal language that offers you the same level of protection for the errors and omissions of others that your clients are seeking from you.

In conclusion, when entering into a new contract, your firm should have a standard review and negotiation process that includes the insurance terms of any contract entered into with a client. It is in your best interest to be familiar with the standard requirements and to have an established position regarding your willingness to meet them. Design firms should not hesitate to specify the coverages or reciprocal agreements they expect of the client, contractors and other parties in order to provide proper protection. In most cases, a fair and equitable contract that serves the interest of all parties can be reached.

A common example of this is when clients demand that they be included as an “additional insured” on your professional liability policy. This is common for contractors but it is not available for design professionals for a number of reasons, including the fact that the client is not a licensed design professional and adding the client as additional insured to the professional liability policy is not a benefit to the client or you the policyholder due to exclusionary language.

Hall & Company provides its clients with complimentary review of insurance requirements in contracts and many insurance companies provide full contract review services to insureds at no additional cost. We also can facilitate for our clients contract reviews with an **A/E specialty legal consulting service** at deeply discounted rates beginning at \$350 annually for qualifying firms. Please don't hesitate to call on us if you have questions or require assistance in reviewing your current insurance program.



While we are not a lawyer and cannot provide legal advice the purpose of this Advisory is to share general knowledge about certain client-written contracts from our 27 years of experience as a specialty insurance broker for design professionals.

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